

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3822 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHREENATH TEXTILE

Versus

PARBATKHAN AANSUMIYA

Appearance:

MR GM JOSHI for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/08/2000

ORAL JUDGEMENT

The short question arising in this petition under Articles 226 and 227 of the Constitution is whether the employees covered by the provisions of the Bombay Shops and Establishments Act, 1948 are entitled to accumulate earned leave in excess of 63 days or not.

2. By the impugned order passed by the Labour Court in a recovery application under Section 33 C(2) of the

Industrial Disputes Act, 1947, the Labour Court had directed the petitioner-employer to pay the respondent-workman wages in lieu of 147 days Earned Leave amounting to Rs.2646/-.

3. While issuing notice and thereafter while admitting the petition, this Court required the petitioner-employer to deposit the full amount, but permitted the respondent-workman to withdraw only 50% of the disputed amount being Rs.1323/- and the balance amount of Rs.1134/- was required to be invested in a Fixed Deposit.

4. At the hearing of this petition today, Mr GM Joshi, learned counsel for the petitioner has relied upon the proviso to sub-section (1) of Section 35 of the Bombay Shops and Establishments Act, 1948. Sub-section (1) of Section 35, in so far as the same is relevant, reads as under :-

"35. Leave - (1)(a) Subject to the provisions of clause (b), every employee who has been employed for not less than three months in any year, shall for every 60 days on which he has worked during the year be allowed leave, consecutive or otherwise, for a period of not less than five days;

(b) every employee who has worked for not less than two hundred and forty days, during a year shall be allowed leave, consecutive or otherwise, for a period of not less than twenty-one days.

Provided that such leave may be accumulated upto a maximum period of sixty-three days.

Explanation :"

5. In view of the aforesaid clear provisions of Section 35, the respondent-workman was not entitled to accumulate more than 63 days earned leave. The wages in lieu of 63 days of earned leave has already been permitted to be withdrawn by the respondent-workman. Hence, he is not required to be paid any further amount.

6. In view of the above discussion, the petition is allowed. The impugned order dated 24.5.1988 of the Labour Court, Ahmedabad in Recovery Application No. 1721/83 is hereby modified to the extent that it is

declared that the respondent-workman was entitled to get wages in lieu of only 63 days of earned leave being the amount of Rs.1134/-. The rest of the order of the Labour Court awarding the amount of wages in excess of 63 days is hereby set aside and the amount of Rs.1512/- deposited in a Fixed Deposit as per the interim order dated 10.8.1988 of this Court alongwith interest thereon shall be permitted to be withdrawn by the petitioner by an Account Payee cheque.

Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

August 18, 2000 (M.S. Shah, J.)
sundar/-